IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2691 OF 1989

with

SPECIAL CIVIL APPLICATION NO.5124 OF 1990

with

SPECIAL CIVIL APPLICATION NO.1556 OF 1990

and

SPECIAL CIVIL APPLICATION NO.6353 OF 1996

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

MOHAMAD DESAI SINDHI

VERSUS

DIST. SUPERINTENDENT OF POLICE

Appearance:
1. Special Civil Application No. 2691 of 1989

MR PN BAVISHI for Petitioner
MR DA BAMBHANIA for Respondent No. 1
MR PREMAL JOSHI for Respondent No. 2, 3

2. Special Civil ApplicationNo 5124 of 1990
MR PN BAVISHI for Petitioner
MR PREMAL JOSHI for Respondent No. 1, 2, 3

3. Special Civil ApplicationNo 1556 of 1990
MR NK THAKKAR for Petitioner
MR PREMAL JOSHI for Respondent No. 1, 2, 3

4. Special Civil ApplicationNo 1556 of 1990
MR MT KIKANI for Petitioner
MR PREMAL JOSHI for Respondent No. 1, 2, 3

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:20/1/2001

C.A.V. JUDGMENT

#. All the four petitioners were employees of the erstwhile princely State of Junagadh. That State was merged firstly in the State of Saurashtra on 20.1.49. The petitioners continued in services in the State of Saurashtra. Then the State of Saurashtra was merged in the new bilingual State of Bombay and ultimately in the State of Gujarat. It is the case of the petitioners that as per the Junagadh State service rules which were framed in exercise of sovereign functions, the age of retirement of the employees is 60 years and these service condition is to be protected. The petitioners stated that the service conditions of the erstwhile employees of the Princely State which merged in the State constituted after independence of the country cannot be changed to their disadvantage without prior approval of the Central Government. Reference in this respect has been made to the provisions of sub-section 7 of Section 115 of the States Reorganization Act, 1956. Reference has also been made to Bombay Reorganization Act, 1960. The petitioners have made reference to the case of one Shri T.K.Budhecha, Chief Executive Authority. In his case, retirement age has been taken to be 60 years. He was also ex-Junagadh State servant which subsequently merged in the Gujarat State. On merger of State, he filed civil suit and the civil court decided the matter in his favour and that

decision has been accepted by the Government of Gujarat and that document has been produced on the record of these special civil applications. It is say of the petitioners that the petitioners are entitled for the same relief which has been given to that person on the basis of judgment of the civil court, otherwise, it will amount to judicial discrimination.

#. The judgment of civil court is not binding on this court. The judgment given by the civil court is binding in between that person and the State Government and rightly the benefit has been given to that person. However, the learned counsel for the respondents has failed to produce on the record of these special civil applications that the service condition, re.: the age of retirement of 60 years was not there of the employees of the ex Junagadh State. The learned counsel for the respondents has also failed to produce on the record any evidence to show that the service condition of the servants of the ex Junagadh State has been changed with prior approval of the Central Government. Out of these four petitions, in two petitions, reply to the special civil application has not been filed. So far as two other special civil applications are concerned, reply has been filed and therein only defence has been taken that those petitioners have given in writing to the respondents, an undertaking, to be governed by Bombay Civil Service Rules, 1959. I find that those two petitioners have given undertaking in writing to be governed by Bombay Civil Service Rules. However, in the reply, it is not the case of the respondents that their service conditions have been changed with prior approval of the Central Government. Nothing has been stated also so far as the case of Shri T.K.Budhecha is concerned.

#. The learned counsel for the petitioners strongly placed reliance on the decision of the Hon'ble Supreme Court in the case of Bholanath J. Thakur v. State of Saurashtra, reported in AIR 1954 SC 680. They further placed reliance on the decision of the Hon'ble Supreme Court in the case of Takhetray Shivdattray Mankad v. State of Gujarat, reported in AIR 1970 SC 143 and in the case of Piara Lal v. State of Punjab & Anr., reported in AIR 1997 SC 3420.

#. The learned counsel for the petitiners contended that merely because the two petitioners have given undertaking that they will be governed by Bombay Civil Service Rules they will not be divested of their right to continue in service till they attain the age of 60 years. These service conditions cannot be changed even on their

consent. The only course available to the respondents is to change it after taking prior approval of the Central Government which is not the case of the respondents.

#. In the reply to those petitions, no other defence has been taken and these matters deserve to be taken up first by a high powered committee to be constituted and to examine re.: the claim of the petitioners in the light of observations made in this judgment and in the light of case of Shri T.K.Budhecha, Chief Executive Authority, an employee of ex Junagadh State and in the light of the decisions of the Hon'ble Supreme Court cited at Bar.

#. In the result, these special civil applications are disposed of in the terms that these petitions be considered as representations of the petitioners by the Chief Secretary of the State of Gujarat and he may place the same for consideration and decision of the high power committee to be constituted under his Chairmanship with three other members, i.e. Secretary, Finance Department, Secretary, Home Department and Secretary, Law Department. The matters are to be decided by the said committee within a period of three months from the date of receipt of Writ of this order. If the petitioners or any of the petitioner desire opportunity of personal hearing, it may be afforded accordingly. Where the claim of the petitioners is acceptable, they shall be entitled for all consequential benefits which are to be determined and paid to them within two months next together with interest thereon @ 12% p.a. from the due date. Where the claim of the petitioners are not acceptable, a reasoned order be passed and a copy of the same be sent to the petitioners by registered post A.D. In case where the order of the high power committee goes adverse to the petitioners, liberty is granted to them for revival of these special civil applications. Rule and special civil applications stand disposed of accordingly with no order as to costs.

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(sunil)